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IN THE

Supreme Court of the United States

October Term, 1973
No. 73-159

RALPH GRIFFIN, *et al.*,

Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION, *et al.*,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Statement of the Case.

Respondent Pacific Maritime Association (PMA) is a multi-employer association of terminal operators, stevedore companies, and steamship lines who operate along the entire West Coast and it has the function of negotiating and entering into collective bargaining agreements with the International Longshoremen's and Warehousemen's Union (ILWU) and its various locals, including Local 13 which is the other Respondent in this case. [Finding 3.][1] There has been a collective bargaining relationship with Local 13 since before World War II and PMA and Local 13 jointly operate a Dispatch Hall from which longshoremen are

[1]The relevant Findings of Fact of the trial court are reprinted in Appendix B. References to the opinion of the Court of Appeals (attached as Appendix A) are shown as (A-page no.).

dispatched on a daily or job basis to various locations in the Los Angeles-Long Beach Harbor area.

The events giving rise to this litigation occurred back in 1946 when approximately 500 men who were lowest in seniority were laid off or, in parlance of the longshore trade, "deregistered". [Finding 2.] At least half of the group were Caucasian. [A-3, Finding 2.] Petitioners, Ralph Griffin and Robert Keele, who claim to represent a class of approximately 25 black and Mexican-American men, were among the group that was deregistered and assert that this act was racially discriminatory conduct against them. Subsequent to 1946 the Petitioners were permitted to "reregister" (Mr. Keele in 1950, Mr. Griffin in 1963[2], and the "class" in the 1948-51 period) and thus once again worked steadily as longshoremen under the PMA-ILWU collective bargaining agreement. [Finding 1.]

Petitioners now claim that under 42 U.S.C. §§1981, 1985 and 2000e-2 they are entitled to receive credit under the 1966-1971 collective bargaining agreement (towards vacation, automation and pension benefits) for the periods they did not work, generally speaking, 1946-1948-51. (There is no claim of any discriminatory conduct against them since their reregistration, nor that any Caucasians deregistered in 1946 are now receiving credit for that period.) Their suit demanding such relief was filed on September 13, 1971 or more than 25 years since the initial act of deregistration. Moreover, it was filed more than 13 years since the time when the effects of the loss of credit on vacations, *etc.* first became *admittedly* perceivable [Finding 7] and 6

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[2]Mr. Griffin was offered reregistration in 1949 but declined at that time. [Finding 1.]

years since the Petitioners participated in grievance-arbitration proceedings raising the *same* contentions. [Findings 8 and 9.][3] Furthermore, one of the Petitioners (Ralph Griffin) even filed suit in 1948 on behalf of himself and 27 others claiming that the 1946 deregistration was racially discriminatory. [Finding 4.] The decision of the California courts was that he had brought a stale claim. *Griffin v. International Longshoremen's and Warehousemen's Union* (1952), 109 Cal.App.2d 823. In this proceeding the Ninth Circuit has come to the same conclusion, the only difference being that some 20 more years have passed.

Questions Presented.

1. Whether under 42 U.S.C. §§1981 and 1985 the most nearly analogous state statute of limitations applies and, if so, whether the act of deregistration in 1946 may be ignored in assessing when such statute commenced to run.

2. Whether a litigant under Title VII of the Civil Rights Act of 1964 may bring suit although no charges have ever been filed with either the California agency having jurisdiction over employment discrimination matters or the EEOC.

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[3]The Petition states that Mr. Griffin and Mr. Keele did not sign the grievance (P-6), but they did participate in the proceedings. [Finding 8.]

REASONS FOR DENYING THE WRIT.

The Decision Below Is Not in Conflict With Prior Decision of Any Court.

A. The Period of Limitations for Conduct Within the Scope of the Civil Rights Act of 1866 Has Always Been the Most Nearly Applicable State Statute of Limitations.

The Ninth Circuit held in this case that any of several California statutes prescribing four years as a period of limitations could be used with respect to the Petitioners' claims under 42 U.S.C. §1981 and affirmed the dismissal on that basis. The Petition for Certiorari asserts two primary contentions against this statute of limitations holding. The first is that the 14th Amendment in some fashion prohibits the application of a state statute of limitations to the provisions of 42 U.S.C. §1981. The second contention is that even if a statute of limitations is applicable, the Respondents should be estopped from pleading it because it was not ascertainable until 1966-1971 that the 1946 deregistration would have certain seniority consequences with respect to vacations and pensions.

As to the first argument the Petition offers no case authority whatsoever and, indeed, conspicuously fails to mention the long line of cases which have held that where a Congressional enactment is silent as to any period of limitations, the general policy is that the most nearly analogous state period of limitations applies. See, *e.g.*, *Chevron Oil Co. v. Huson* (1971), 404 U.S. 97; *United Automobile Workers v. Hoosier Cardinal Corp.* (1966), 383 U.S. 696; *Campbell v. Haverhill* (1895), 155 U.S. 610. The Petitioners' brief also fails to mention that every circuit court which has considered the question of whether §1981 has a

period of limitations has also concluded that the analogous state statute of limitations governs. *Green v. McDonnell-Douglas Corp.* (8th Cir. 1972), 463 F.2d 337, *modified on other grounds*, ... U. S. ...., 36 L.Ed.2d 668 (1973) (5-year state statute governing employment contracts applicable to discriminatory layoff claim); *Young v. International Tel. & Tel. Co.* (3d Cir. 1971), 438 F.2d 757, 763; *Boudreaux v. Baton Rouge Marine Co.* (5th Cir. 1971), 437 F.2d 1011 (governing statute of limitations was either 10-year Lousiana state governing contracts or, if back wages claimed, one-year statute applicable to the recovery of workmen's wages); *Waters v. Wisconsin Steel Works* (7th Cir. 1970), 427 F.2d 476, *cert. den.*, 400 U.S. 911 (5-year statute governing civil action not otherwise provided for). See also *Page v. Curtis-Wright Corp.* (D.N.J. 1971), 332 F.Supp. 1060 (6-year statute governing breach of contract action).

Thus not only is there no conflict in judicial decisions on this point, but also the authority in support of the Ninth Circuit's holding in this case is so abundant that the issue deserves the mantle of being considered "well-settled". The only "rebuttal" Petitioners attempt to offer is a somewhat ambiguous reference to *Holmberg v. Armbrecht* (1945), 327 U.S. 392. That case acknowledged that the general rule is to follow a state statute of limitations where a Congressional statute is silent on the period of limitations, but then also held that where the action was wholly "equitable" no statute of limitations was applicable. The citation of this case is confusing because Petitioners do not make the argument that §1981 creates an equitable action. However, to the extent such an argument is implied, it is clear from the above-cited cases that §1981 is not governed

by the *Holmberg* rule. See also *United States v. Georgia Power Co.* (5th Cir. 1973), 474 F.2d 906, 923. Moreover this Court itself has held that with respect to a related 1866 Civil Rights Act statute, 42 U.S.C. §1983, the appropriate state statute of limitations applies. *O'Sullivan v. Felix* (1914) 233 U.S. 318.[4]

As to the second contention that the statute of limitations did not begin to run until sometime in the 1966-71 period, Petitioners' brief was equally devoid of any legislative, textual or judicial authority. As the Ninth Circuit found, "the perceivable effects of the alleged wrong were substantial at the outset." (A-2.) They were so perceivable that one of the Petitioners brought suit in 1948 in state court raising the same issue present here and both Petitioners participated in grievance-arbitration proceedings commenced in 1965 claiming that under the *1961-1965* collective bargaining agreement they were being wrongfully denied seniority credit.

Moreover, as the District Court found, there was actual knowledge as of 1958 that the loss of credit arising from the 1946 deregistration was affecting the amount of earned vacation.[5] Under such circumstances the Ninth Circuit correctly rejected any notion of there being continuing discrimination preventing the period of limitations from ever running. Certainly a layoff by itself is not such a continuing act (See *Developments in the Law-Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 Harv.L.Rev. 1109,

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[4]Numerous circuit court cases since the *O'Sullivan* case have held to the same effect. See, *e.g. Marnin v. Zampella* (3d Cir. 1972), 456 F.2d 1097, *cert. den.*, 406 U.S. 960.

[5]Thus the Petitioners' assertion on pages 12-14 of their Petition that the effects were not ascertainable until 1966 or thereafter is incorrect.

1211 (1971); *Kennedy v. Wheeling Pittsburgh Steel Corp.* (4th Cir. 1972), ... F.2d ...., 81 RRM 2349)[6] and, in any event, the only way Petitioners could successfully maintain the suit would be to prove that the stale events of 1946 were motivated by racial considerations. Such a reexamination of stale events, however, is precisely why statutes of limitations are enacted and Petitioners have totally failed to provide any reason why this Court should grant *certiorari* in order to possibly create a novel exception to the important policies served by statutes of limitations.

B. The Title VII Claim Was Properly Dismissed as None of the Statutory Prerequisites Were Followed.

One of the jurisdictional bases relied upon by Petitioners was Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* That Act provides that a claimant may sue in District Court only after a charge has been filed with the EEOC and, if the act occurs in a state which has an agency authorized to seek relief on behalf of such a claimant, such charge must also be referred to the state agency. 42 U.S.C. §2000e-5. California has such an agency. Cal.Lab.Code §1410 *et seq.*

Despite this clear statutory command, Petitioners never filed charges with the California state agency or the EEOC. The excuse proffered is that had they filed

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[6]The *Kennedy* case involved a claim that an employer had violated a collective bargaining agreement by laying off plaintiffs and not transferring the plaintiffs promptly enough, thereby leading to a loss of seniority credit. The layoff occurred in 1963 but suit was not brought until 1971. The court held that the suit was barred by West Virginia's five-year statute of limitations pertaining to oral contracts and further held that a denial of seniority credit is not a continuing violation, as the cause of action accrued at the time of the layoff.

with the EEOC they would have been met with an exhaustion of administrative remedies argument since a grievance-arbitration procedure was available, and if they pursued administrative relief the 90-day[7] period of limitations contained in Title VII would have run.

However, as both the Ninth Circuit and the District Court found, the horns of the legal dilemma which Petitioners have asserted was self-created. Petitioners cite no cases to substantiate the proposition that any charge filed with the EEOC would not have been processed because of a failure-to-exhaust-grievance-arbitration-remedies argument, because there are none. The EEOC and the courts have not held that Title VII remedies must await the workings of a grievance procedure. Indeed, the law is all to contrary. All the courts that have considered the question have held that Title VII claimants may simultaneously pursue both their Title VII remedies and their collective bargaining remedies, at least up to the point where there will be a final decision in one forum. See, *e.g., Newman v. Avco* (5th Cir. 1971), 451 F.2d 743; *Bowe v. Colgate-Palmolive Co.* (7th Cir. 1969), 416 F.2d 711.

The only case citation provided by Petitioners in connection with their argument on this point is *Love v. Pullman Co.* (1972), 404 U.S. 522. However, the citation is a particularly ill-chosen one, since the first sentence of the Court's opinion makes it clear that a Title VII claimant may *not* maintain suit unless certain administrative requirements are pursued. Thus the Petition has neither established that there are decisions of other circuits or this Court in conflict with the Ninth

[7]The Petitioners' reference to a 90-day period of limitations is erroneous. The limitations period applicable at that time to this case was 210 days.

Circuit's decision, nor that the question is of any substance to warrant being addressed by this Court again. It is therefore submitted that the case is not worthy of further consideration and that this court need not, and should not, review the Ninth Circuit's decision.

Conclusion.

For the reasons stated above, Respondent PMA urges the Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

DATED: August 17, 1973.

Respectfully submitted,

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Attorney for Respondent Pacific Maritime Association.

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KENNETH W. ANDERSON.

APPENDIX A.

Opinion of the Court of Appeals for the Ninth Circuit.

United States Court of Appeals, for the Ninth Circuit.

Ralph Griffin and Robert E. Keele, Appellants, vs. Pacific Maritime Association and Local 13, International Longshoremen's and Warehousemen's Union, Appellees. No. 72-2117.

[April 25, 1973]

Appeal from the United States District Court for the Central District of California.

Before: MERRILL, ELY, AND WRIGHT, Circuit Judges.

PER CURIAM:

A group of longshoremen appeal from an order granting summary judgment in favor of their union and certain employers.

The longshoremen complain that in 1946, they were "deregistered" by the union and prevented from pursuing their trade until, several years later, they were allowed to reregister. They alleged that the 1946 layoff was racially motivated and contend that the blacks and Mexican-Americans who were deregistered are entitled to receive credit (towards seniority and vacation, automation and pension pay) for the periods during which they did not work, 1946 to 1948-51.

On multiple grounds the District Court held that it was not required to reach the merits of the claim. We agree with the District Court that the action was barred by reason of the passage of time and the appellants' failure to exhaust another remedy. We make no judg-

ment on the merits of the claim. Nor do we announce an opinion as to the correctness of the other grounds upon which the District Court rested its decisions.

The longshoremen alleged jurisdiction by reason of both the 1866 Civil Rights Act (42 U.S.C. §§ 1981, 1985) and the 1964 Civil Rights Act (42 U.S.C. § 2000-e).

The 1866 Act

The pertinent provisions of the 1866 Civil Rights Act prescribe no period of limitations; hence, the most nearly analogous state period of limitations applies. *See, e.g., United Automobile Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966); *Young v. International Tel. & Tel. Co.*, 438 F.2d 757, 763 (3d Cir. 1971).

The most nearly applicable California statutes prescribe limitation periods not exceeding four years. *See* Cal. Code Civ. Pro. §§ 337, 338(1) West 1972 Supp.) & 343 (West 1954). If any one of these statutes governs the longshoremen's § 1981 and § 1985 actions, the filing of the complaint was decidedly tardy.

The longshoremen advance two reasons why the statute of limitations should not be held to have commenced to run from 1946 or thereabouts.[1] First, they argue that the pension and fringe benefits were not fully ascertainable until sometime later, and they contend that their cause of action resides in their 1966-71 contract. We recognize that there may be cases in which a legal wrong has no significantly compensable consequences until the occurrence of a subsequent event. But we need not now decide whether, in such in-

[1]The suggestion that appellees were estopped from asserting the statute of limitations as a defense has no merit whatsoever.

stances, the period of limitations should be considered to commence from the date of that event. Here, the perceivable effects of the alleged wrong were substantial at the outset. In 1948, one of the appellants in this case instituted suit in the California courts, seeking to regain union membership and employment. That suit presented the precise central issue that is now presented here and was decided adversely to the appellant Griffin. *Griffin v. International Longshoremen's and Warehousemen's Union,* 109 Cal. App. 2d 823 (1952). And, in 1965, 33 longshoremen filed a grievance based on their 1946 deregistration and unsuccessfully resorted to arbitration.

Second, the appealing longshoremen contend that by refusing to credit them with the years lost after 1946, appellees are now committing a discriminatory act. We are not unmindful of certain cases wherein the theory of continuing discrimination has been upheld. *See, e.g., Love v. Pullman Co.,* 404 U.S. 522, 524 n.3 (1972); *Cox v. United States Gypsum Co.,* 409 F.2d 289 (7th Cir. 1969). A layoff, by itself, however, is not such a continuing act. *See Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 84 Harv. L. Rev. 1109, 1211 (1971). Furthermore, in the present case, the only manner in which the appellants could have possibly established their claim was by evidence as to what motivated the 1946 act of deregistration and the subsequent, although short-lived, refusal to allow registration.[2] In

[2]On the face of it, denial of fringe benefits under the 1966-71 contract is a racially neutral act. At least half of the longshoremen deregistered in 1946 were Caucasian, and all had lower seniority than those not deregistered. There is no claim that the deregistered men have been the victims of discrimination since their reregistration, except inasmuch as they lost their years outside the union.

these circumstances, the District Court properly held that the claims under 42 U.S.C. §§ 1981 and 1985 were barred by reason of the lengthy lapse of time.

The 1964 Act

Unlike the 1866 Act, Title VII of the 1964 Civil Rights Act contains provisions that effectively operate to create a limitations period. An aggrieved party may sue in the District Court only if he has first filed charges with the Equal Employment Opportunity Commission (EEOC) within 90 days from the occurrence of the alleged violation, and the suit must be filed within thirty days from receipt of a notice of failure of conciliation from the EEOC. 42 U.S.C. § 2000e-5(a)&(d).

When a state has prohibited the unlawful practice alleged and has provided an agency "to grant or seek relief," additional administrative recourse is a prerequisite to private suit. The state agency must be notified, and the charge with the EEOC must be filed no later than thirty days after the state investigation is completed.[3] 42 U.S.C. § 2000e-5(b)&(d). *See Love v. Pullman, supra.*

California has established the remedies contemplated in § 2000c-5(b). *See* California Fair Employment Practice Act, Cal. Labor Code §§ 1410 et seq. (West 1971).

The appellants have never filed charges with the state agency or with the federal commission. They explain their failure to have done so on the theory that exhaustion of these remedies would have been futile

[3]Title VII does not specify how long a person may delay the filing of charges with the state agency. In California, one is allowed a period of one year from the occurrence of the allegedly unlawful act within which to file his claim with the state commission. Cal. Labor Code § 1422 (West 1971).

because these agencies would merely have required them to seek arbitration. In advancing this argument, the appellants misconceive the role of the EEOC.[4] Moreover, even after their unsuccessful recourse to arbitration, the longshoremen did not pursue the administrative remedies specified in Title VII.[5] Having failed to comply with the requirements of 42 U.S.C. § 2000e-5(a)&(b), the appellants may not, at this late date, maintain action under the Civil Rights Act of 1964.

AFFIRMED.

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[4]There is no jurisdictional bar to invoking Title VII remedies and the arbitration process independently. *See Newman v. Avco Corp.*, 451 F.2d 743 (6th Cir. 1971); *Hutchings v. United States Industries, Inc.*, 428 F.2d 303, 311-14 (5th Cir. 1970); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 714-15 (7th Cir. 1969). *But see Alexander v. Gardner-Denver Co.*, 466 F.2d 1209 (10th Cir. 1972). And our court has held that there is no requirement that *all* conceivable state remedies be exhausted prior to the institution of a Title VII suit. *Crosslin v. Mountain States Tel. & Tel. Co.*, 422 F.2d 1028, 1031 (9th Cir. 1970).

[5]*Cf. Culpepper v. Reynolds Metal Co.*, 421 F.2d 888 (5th Cir. 1970).

APPENDIX B.

Findings of Facts and Conclusions of Law of the United States District Court, Central District of California.

United States District Court, Central District of California.

Ralph Griffin, et al., Plaintiffs, v. Pacific Maritime Association and Local 13, International Longshoremen's and Warehousemen's Union, an Unincorporated Association, Defendants. Civil Action No. 71-2188-JWC.

Filed April 6, 1972.

The motions for summary judgment by defendants, PACIFIC MARITIME ASSOCIATION, (hereafter referred to as PMA) and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 13 came on regularly for hearing and was heard on March 27, 1972. The Court, upon consideration of the pleadings, affidavits, points and authorities, depositions, and the entire record in the case makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiffs Ralph Griffin and Robert Keele were employed as longshoremen in the Los Angeles-Long Beach area from 1944 to 1946. They along with approximately 500 other "limited registered" men were deregistered in April, 1946 and thus lost the right to any priority in dispatch to such jobs. As a result they did not work steadily as longshoremen until they were reregistered. Most of the men were reregistered in the 1948 to 1951 period and came back to work. Robert Keele was reregistered in 1950. Ralph Griffin, although

offered reregistration in 1949, did not commence work as a longshoreman again until 1963.

2. Plaintiffs are black and claim that the action in 1946 was motivated by racial considerations, although approximately half the men who had their employment terminated then were white. Plaintiffs have brought suit on behalf of only 25 or so specific black and Mexican-American men who were affected by the action that occurred in 1946.

3. Defendant Local 13 has been the collective bargaining representative of plaintiffs since 1944 and plaintiffs have been members of Local 13 for the periods in which they actually worked as longshoremen. Defendant PMA has no voice in or influence over the selection of members into Local 13. Defendant PMA, a multi-employer association of employers in the maritime industry responsible for the administration of labor-management relations, or its predecessors, have had collective bargaining agreements with the International Longshoremen's and Warehousemen's Union applicable to the longshore work performed by plaintiffs during this entire period of time. In 1946 and to date such collective bargaining agreements have contained clauses prohibiting racial discrimination.

4. Ralph Griffin and a number of others who are part of the alleged class commenced litigation in 1948 against Local 13 seeking to regain membership and employment. Said suit was eventually dismissed in 1952 by the California District Court of Appeal on the grounds of laches and the statute of limitations. The claim in that suit was in all material respects the same as the central claim in the instant lawsuit.

5. The collective bargaining agreements with PMA first provided for three weeks of vacation in 1954.

The requirement for years of service was then 12 years. In 1958 this requirement was dropped to 10 years and a fourth week of vacation was added for those longshoremen with 25 years of work. In 1962 this requirement of 25 years was lowered to 20 years. As with vacation benefits, pension benefits and "automation pay" have also been dependent on a specified number of years of work as a longshoreman.

6. Plaintiffs, along with other longshoremen deregistered in 1946, both white and black, have not been given credit for the period in which they were deregistered (1946 to 1949-51). There has been no claim that any other period of time is involved and no evidence of any failure to give credit for years actually worked.

7. As of 1958 longshoremen who had been deregistered in 1946 had to know that they were not being credited with years they had not actually worked as longshoremen, since in that year a third week of vacation was granted to those longshoremen having worked 10 years. Plaintiff Robert Keele had actual knowledge at approximately that time that he was not receiving credit for the years 1946-1950.

8. In 1965 approximately 33 longshoremen on behalf of themselves and others similarly situated filed a grievance against the defendants claiming that they had been discriminated on account of their race in 1946 and demanding that they be credited with the years during which they had been deregistered. The plaintiffs here actively participated in the grievance and subsequent arbitrations.

9. The grievance was taken through a two step arbitration procedure and in each step the grievance

was denied. The final opinion and decision was rendered by Sam Kagel, Coast Arbitrator, who ruled on March 11, 1971, *inter alia,* that the grievance was barred by the extraordinarily long delay in asserting it and that no racial discrimination was proved since over half of the deregistrants were white and they had been treated no differently than the black deregistrants.

10. Plaintiffs have made no attempts to file charges with the California Fair Employment Practices Commission or the EEOC.

11. The following Conclusions of Law, insofar as they may be considered Findings of Fact, are also found by the Court to be true in all respects. From the foregoing facts the Court concludes that:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this action as it involves claims of violations of civil rights under 42 U.S.C. §§ 1981, 1982, 1985 and 2000e-2.

2. Under §§ 1981, 1982 and 1985 the statute of limitations is the appropriate state statute of limitations. In this case the longest appropriate state statute is the four year statute under Cal. Code Civ. Proc. § 337 applicable to contracts founded upon an instrument in writing.

3. Regardless of which California statute is the most appropriate period of limitations the complaint here is barred since the cause of action accrued in 1946 or more than 25 years before this complaint was filed. It was in 1946 that the plaintiffs were deregistered, and thus, in essence, terminated, and all consequences to plaintiffs have stemmed from that action. Even assuming another cause of action accrued

when plaintiffs were denied credit for fringe benefit purposes under their collective bargaining contract, the complaint is still barred since such a cause of action would have accrued in 1958. The allegation in the complaint that "defendants" have continued to date to bar plaintiffs from union membership because of race does not prevent the applicability of the statute of limitations, since plaintiffs have controverted this allegation by admitting they have been Local 13 members since being reregistered and, in any event, it is uncontroverted that PMA has no role in selecting union members.

4. The claims of plaintiffs are also barred since they have previously been litigated in an arbitration proceeding with a decision adverse to their claims. By proceeding to a final arbitration award plaintiffs have been a binding election of remedies and are estopped from further proceedings. Furthermore this suit constitutes an improper attempt to collaterally attack an arbitration award. Plaintiffs have neither followed the mandate of 9 U.S.C. § 9-11, nor have they alleged wherein the arbitrator was without jurisdiction to render the award made.

5. The claim under Title VII must be dismissed since plaintiffs have not complied with the requirements of § 2000e-2 *et. seq.* by filing charges with the California Fair Employment Practices Commission or the EEOC. Absent such compliance the Court has no jurisdiction over Title VII allegations.

6. The claims under § 1981 and § 1985 are also barred because plaintiffs have neither pleaded nor provided any reasonable excuse for not attempting to proceed under Title VII. Such an excuse is necessary

in order to accommodate the requirements of Title VII with §§ 1981 and 1985. *Waters v. Wisconsin Steel Works* (7th Cir. 1970), 427 F.2d 476, *cert. den.*, 400 U.S. 911.

7. The Complaint does not state a cause of action under § 1982 as that statute is inapplicable to employment discrimination claims.

8. Plaintiff Ralph Griffin, along with other longshoremen who are parties to the prior litigation in the California courts are prevented by the doctrine of collateral estoppel from continuing with this action.

9. Since there are no genuine issues of material fact involving the Conclusions of Law set forth here, defendants PMA and Local 13 are entitled to summary judgment.

10. Any Conclusions of Law contained in the Findings of Fact are deemed incorporated herein by reference. Each of the above Conclusions of Law constitute an independent ground for awarding judgment to defendants.

DATED: April 6, 1972.

JESSE W. CURTIS
United States District Judge